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Attorneys for Defendants

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRANK MAZZOCCHI on behalf of himself and JANE
DOE,

Plaintiff,

WINDSOR OWNERS CORP., TUDOR REALTY
SERVICES CORP., U.F.H. APARTMENTS, INC.,
ISAAC STERN, VIVIENNE GILBERT, MAUREEN
DUNPHY, SCOTT NAGLE, JAMES TAYLOR, PAUL
MATTEN, JIN HAN, NANCY BARSOTTI, MICHAEL
GEORGE INC., FLOWERSCHOOL NEW YORK INC.,
FERRUH BECERIKLISOY, and NORBERTO
HERNANDEZ, Individually and in their Corporate
Capacity,

Defendants.

11 Civ. 7913 (LBS)

**ANSWER TO THE AMENDED
COMPLAINT BY
DEFENDANTS WINDSOR
OWNERS CORP., TUDOR
REALTY SERVICES CORP.,
VIVIENNE GILBERT,
MAUREEN DUNPHY, JAMES
TAYLOR, PAUL MATTEN,
AND NANCY BARSOTTI**

DEFENDANTS WINDSOR OWNERS CORP., TUDOR REALTY SERVICES CORP.,

VIVIENNE GILBERT, MAUREEN DUNPHY, SCOTT NAGLE, JAMES TAYLOR, PAUL

MATTEN, AND NANCY BARSOTTI (“Answering Defendants”) by their attorneys, Rosen

Livingston & Cholst LLP, answer the Amended Complaint as follows:

1. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 1.
2. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 2.

3. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 3.

4. Deny the allegations with respect to Plaintiff's alleged county of residence and that he owns the shares of the Proprietary Lease. Answering Defendants otherwise admit that Frank Mazzocchi is a citizen of the United States of America and State of New York set forth in Paragraph 4.

5. Admit the allegations set forth in Paragraph 5.

6. Admit the allegations as set forth in Paragraph 6.

7. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 7.

8. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 8.

9. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 9.

10. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 10.

11. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 11.

12. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 12.

13. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 13.

14. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 14.

15. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 15.

16. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 16.

17. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 17.

18. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 18.

19. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 19.

20. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 20.

21. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 21.

22. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 22.

23. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 23.

24. Admit the allegations as set forth in Paragraph 24 and denies the characterization of the convenience store as “tiny”.

25. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 25.

26. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 26.

27. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 27.

28. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 28.

29. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 29.

30. Admit that Frank Mazzocchi sublet the apartment from February 15, 1994-August 31, 1996 with the Board's consent, and otherwise deny the allegations set forth in Paragraph 30.

31. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 31.

32. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 32.

33. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 33.

34. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 34.

35. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 35.

36. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 36.

37. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 37.

38. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 38.

39. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 39.

40. Deny having knowledge sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 40.

41. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 41.

42. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 42.

43. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 43.

44. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 44.

45. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 45.

46. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 46.

47. Deny having knowledge sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 47.

48. Deny having knowledge sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 48.

49. Deny having knowledge sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 49.

50. Deny having knowledge sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 50.

51. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 51.

52. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 52.

53. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 53.

54. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 54.

55. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 55.

56. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 56.

57. Admit that Plaintiff obtained the permission of the Board to sublet the subject apartment from February 15, 1994-August 31, 1996 alleged in paragraph 57.

58. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 58.

59. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 59.

60. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 60.

61. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 61.

62. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 62.

63. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 63.

64. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 64.

65. Deny the allegations as set forth in Paragraph 65.

66. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 66.

67. Deny the allegations as set forth in Paragraph 67.

68. Deny the allegations as set forth in Paragraph 68.

69. Deny the allegations as set forth in Paragraph 69.

70. Deny the allegations as set forth in Paragraph 70.

71. Deny the allegations as set forth in Paragraph 71.

72. Deny the allegations as set forth in Paragraph 72.

73. Deny the allegations as set forth in Paragraph 73.

74. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 74.

75. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 75.

76. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 76.

77. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 77.

78. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 78.

79. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 79.

80. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 80.

81. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 81.

82. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 82.

83. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 83.

84. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 84.

85. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 85.

86. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 86.

87. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 87.

88. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 88.

89. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 89.

90. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 90.

91. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 91.

92. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 92.

93. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 93.

94. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 94.

95. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 95.

96. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 96.

97. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 97.

98. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 98.

99. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 99.

100. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 100.

101. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 101.

102. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 102.

103. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 103.

104. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 104.

105. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 105.

106. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 106.

107. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 107.

108. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 108.

109. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 109.

110. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 110.

111. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 111.

112. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 112.

113. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 113.

114. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 114.

115. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 115.

116. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 116.

117. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 117.

118. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 118.

119. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 119.

120. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 120.

121. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 121.

122. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 122.

123. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 123.

124. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 124.

125. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 125.

126. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 126.

127. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 127.

128. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 128.

129. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 129.

130. Deny the allegations as set forth in Paragraph 130.

131. Deny the allegations as set forth in Paragraph 131.

132. Deny the allegations as set forth in Paragraph 132.

133. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 133.

134. Deny the allegations as set forth in Paragraph 134.

135. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 135.

136. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 136.

137. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 137.

138. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 138.

139. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 139.

140. Deny the allegations as set forth in Paragraph 140.

141. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 141.

142. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 142.

143. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 143.

144. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 144.

145. Deny the allegations as set forth in Paragraph 145.

146. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 146.

147. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 147.

148. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 148.

149. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 149.

150. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 150.

151. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 151.

152. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 152.

153. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 153.

154. Deny the allegations as set forth in Paragraph 154.

155. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 155.

156. Deny the allegations as set forth in Paragraph 156.

157. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 157.

158. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 158.

159. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 159.

160. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 160.

161. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 161.

162. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 162.

163. Deny the allegations as set forth in Paragraph 163.

164. Deny the allegations as set forth in Paragraph 164 and respectfully refer the Court to the provisions of the Proprietary Lease for its precise terms.

165. Deny the allegations as set forth in Paragraph 165.

166. Deny the allegations as set forth in Paragraph 166.

167. Deny the allegations as set forth in Paragraph 167.

168. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 168.

169. No response to the allegations of Paragraph 169 is required as those allegations call for a legal conclusion. To the extent a response is required, those allegations are denied.

170. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 170.

171. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 171 and respectfully refer the Court to the provisions of the Proprietary Lease for its precise terms.

172. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 172 and respectfully refer the Court to the provisions of the Proprietary Lease for its precise terms.

173. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 173.

174. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 174 and respectfully refer the Court to the provisions of the Proprietary Lease for its precise terms.

175. Deny the allegations as set forth in Paragraph 175.

176. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 176.

177. Deny the allegations as set forth in Paragraph 177.

178. Deny the allegations as set forth in Paragraph 178.

179. Deny the allegations as set forth in Paragraph 179.

180. No response to the allegations of Paragraph 180 is required as those allegations call for a legal conclusion. To the extent a response is required, those allegations are denied.

181. No response to the allegations of Paragraph 181 is required as those allegations call for a legal conclusion. To the extent a response is required, those allegations are denied.

182. No response to the allegations of Paragraph 182 is required as those allegations call for a legal conclusion. To the extent a response is required, those allegations are denied.

183. No response to the allegations of Paragraph 183 is required as those allegations call for a legal conclusion. To the extent a response is required, those allegations are denied.

184. No response to the allegations of Paragraph 184 is required as those allegations call for a legal conclusion. To the extent a response is required, those allegations are denied.

185. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 185.

186. Deny the allegations as set forth in Paragraph 186.

187. Deny the allegations as set forth in Paragraph 187.

188. No response to the allegations of Paragraph 188 is required as those allegations call for a legal conclusion. To the extent a response is required, those allegations are denied.

189. No response to the allegations of Paragraph 189 is required as those allegations call for a legal conclusion. To the extent a response is required, those allegations are denied.

190. No response to the allegations of Paragraph 190 is required as those allegations call for a legal conclusion. To the extent a response is required, those allegations are denied.

191. No response to the allegations of Paragraph 191 is required as those allegations call for a legal conclusion. To the extent a response is required, those allegations are denied.

192. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations as set forth in Paragraph 192.

193. Deny the allegations as set forth in Paragraph 193.

194. Deny the allegations as set forth in Paragraph 194.

195. Deny that Answering Defendants have engaged in any discriminatory conduct, and, to the extent that that the Plaintiff's requests that this Court obtains the intervention of the executive branch of the United States Government, Answering Defendants respond that no response is required as that allegation calls for a legal conclusion. To the extent that a response is required, Answering Defendants deny that Plaintiff has a right to such intervention as requested in Paragraph 195.

196. No response to the allegations of Paragraph 196 is required as those allegations call for a legal conclusion. To the extent a response is required, those allegations are denied.

197. No response to the allegations of Paragraph 197 is required as those allegations call for a legal conclusion. To the extent a response is required, those allegations are denied.

198. No response to the allegations of Paragraph 198 is required as those allegations call for a legal conclusion. To the extent a response is required, those allegations are denied.

199. Deny the allegations as set forth in Paragraph 199.

200. Deny the allegations as set forth in Paragraph 200.

201. No response to the allegations of Paragraph 201 is required as those allegations call for a legal conclusion. To the extent a response is required, those allegations are denied.

202. Deny the allegations as set forth in Paragraph 202.

203. Deny the allegations as set forth in Paragraph 203.

204. Deny the allegations as set forth in Paragraph 202.

205. Deny the allegations as set forth in Paragraph 204.

206. No response to the allegations of Paragraph 205 is required as those allegations call for a legal conclusion. To the extent a response is required, those allegations are denied.

- 207. Deny the allegations as set forth in Paragraph 206.
- 208. Deny the allegations as set forth in Paragraph 207.
- 209. Deny the allegations as set forth in Paragraph 208.
- 210. Deny the allegations as set forth in Paragraph 209.
- 211. Deny the allegations as set forth in Paragraph 210.
- 212. Deny the allegations as set forth in Paragraph 211.

AFFIRMATIVE DEFENSES

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

- 1. This Court lacks subject matter jurisdiction.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

- 2. Plaintiff has failed to serve Defendants with sufficient service of process.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

- 3. Plaintiff has failed to state a claim upon which relief can be granted.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

- 4. Plaintiff lacks standing to bring this Third Party Complaint.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

- 5. An alleged violation of the Fair Housing Act does not give rise to a claim under 42 U.S.C. §1985(3).

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

- 6. The claims are barred, in whole or in part, by the Statute of Limitations.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

- 7. This Court lacks personal jurisdiction over Defendants.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

8. Answering Defendants have not denied Jane Doe a rental because of a handicap.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

9. Plaintiff lacks sufficient process for this action.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

10. Plaintiff has failed to join a party under Rule 19.

AS AND FOR A FIRST COUNTERCLAIM

1. Answering Defendants are entitled to their attorneys' fees in this action pursuant to 42 U.S.C. §1988(b) and 42 U.S.C. §3613(c)(2) .

2. In bringing this lawsuit, not once, but twice, Plaintiff has subjected Answering Defendants to a conspiracy claim and Fair Housing Act claim that are meritless as a matter of law.

3. Both claims are "frivolous, unreasonable, or without foundation".

4. Moreover, to the extent expert testimony is required in this action, then the Court may include expert fees as part of the attorney's fee under 42 U.S.C. §1988(c).

5. In the event that Answering Defendants are adjudged to be the prevailing parties in this action, then they are entitled to an award constituting their attorney's fees and costs, including but not limited to expert fees.

WHEREFORE, Answering Defendants pray for judgment as follows:

- (a) Judgment in their favor dismissing the Amended Complaint; and
- (b) Judgment in their favor on the First Counterclaim, for an award of attorney's fees and costs, including but not limited to expert fees; and
- (c) For such other and further relief as the Court finds just and proper.

Dated: New York, New York
October 1, 2013

ROSEN LIVINGSTON & CHOLST LLP

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